



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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B-212563

August 3, 1983

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental Affairs
United States Senate

Attention: Marikay Riney

Dear Mr. Chairman:

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This is in reply to your May 10, 1983, letter requesting our views on the provisions of S. 1181, a bill entitled "Construction Contract Payment Procedures Act of 1983."

The bill would require Federal executive agencies, when they elect to make progress payments under a construction contract, to make such progress payments in full to the contractor without retention of any portion of the progress payment due unless the contracting officer finds and determines that the contractor is not making timely or otherwise satisfactory progress towards completion of the contract. Currently, the Government is reimbursing contractors at rates ranging from 90 to 95 percent of progress payments due under construction contracts.

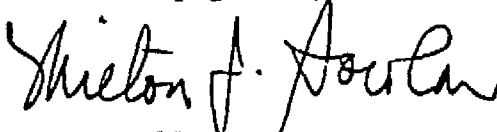
We do not believe the provisions of the bill, if enacted, would be consistent with good business practice or would provide the Federal Government the protection that retention of a percentage of progress payments now affords. It is general business practice--and we believe a prudent one--to withhold a portion of payments on construction contracts to ensure satisfactory completion. Such withholding serves to protect against shoddy workmanship that may not be discovered until final acceptance inspection by the Government. Further, on other than fixed-price contracts, the withholding also serves to guard against the Government's paying for costs determined subsequently to be unallowable.

In recent testimony, related in part to this issue, before your Committee, the Defense Deputy Inspector General, Mr. Derek Vander Schaaf, also indicated that retention of a percentage of progress payments has substantial value. While the testimony covered progress payment rates for other than construction contracts, we believe the issue is the same as that raised by S. 1181. The Department of Defense (DOD) increased payment rates in 1981 from 85 percent for small businesses and 80 percent for large contractors, to 95 and 90 percent, respectively. Mr. Vander Schaaf indicated that with recent decreases in inflation and interest rates, DOD should consider reducing the current high progress payment rates.

You also asked that we provide you with our assessment of the possible paperwork and regulatory burdens which might result from passage of S. 1181. We cannot provide you with a complete assessment without further detailed study. While there may be some instances in which the bill could increase Government paperwork (e.g., without the leverage of funds withheld there may be a need for repeated requests to correct unsatisfactory contractor work), we would not expect any added burden to be significant. Also, we do not believe contractors will be burdened with additional paperwork.

We appreciate the opportunity to provide our comments on this bill.

Sincerely yours,

for 
Comptroller General
of the United States